

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION**

LORILLARD TOBACCO COMPANY

and

LORILLARD LICENSING COMPANY, L.L.C.

Plaintiffs,

v.

WILSON WHOLESALE & DISTRIBUTORS,

and JOHN DOES 1-10,

Defendants.

Civil Action No. 5:10-cv-480-FL

CONSENT JUDGMENT

This case comes before the Court upon the pleadings submitted by Plaintiffs Lorillard Tobacco Company and Lorillard Licensing Company, L.L.C. (“Lorillard”) and Defendant Wilson Wholesale & Distributors (“Wilson”), and the parties consenting hereto and for good cause shown:

IT IS HEREBY ORDERED, ADJUDICATED AND DECREED:

1. This Court has jurisdiction over these parties and the subject matter herein.
2. Plaintiff Lorillard Tobacco Company (“Lorillard Tobacco”) is a corporation organized and existing under the laws of the State of Delaware, having a place of business at 714 Green Valley Road, Greensboro, North Carolina.
3. Plaintiff Lorillard Licensing Company, L.L.C. (“Lorillard Licensing”) is a limited liability company organized and existing under the laws of the State of North Carolina, having




place of business at 1601 Wachovia Tower, 300 North Greene Street, Greensboro, North Carolina.



4. Defendant Wilson Wholesale & Distributors is a North Carolina company with a place of business at 115-A West Hines Street, Wilson, North Carolina.



5. Venue is proper in this judicial district and division.


6. The parties stipulate to the following

a. Lorillard Licensing owns all right, title and interest in the following trademarks and trade dress elements related to Lorillard's NEWPORT Brand cigarettes:

Registration No.	Registration Date	Description	Image/Mark
1,108,876	12/12/1978	Word mark	NEWPORT
1,191,816	3/9/1982	NEWPORT & Design	
3,579,236	2/4/2009	Box with white top, striations & spinnaker	
3,836,509	8/24/2010	Box with white top & striations	

3,579,270	2/24/2009	Color is not claimed as a feature of the mark. The mark consists of a rectangle design, the word "Newport" written in the top portion of the rectangle, a horizontal stripe pattern covering a portion of the rectangle, a spinnaker in the lower right corner of the rectangle, and the words "Menthol Box" below the spinnaker	
3,601,464	4/7/2009	The colors green, gold, white and black are claimed as a feature of the mark. The mark consists of a rectangle design with white at the top portion of the rectangle, the stylized green word "Newport" written in the white portion, a gold horizontal stripe immediately adjacent to the white portion, the portion below the gold horizontal stripe is green with a black horizontal strip	

		<p>pattern, a white spinnaker in the lower right corner of the rectangle and the white stylized words 'menthol box' under and to the left of the spinnaker</p>	
3,759,763	3/16/2010	<p>The colors green, gold, black and white are claimed as a feature of the mark. The mark consists of a rectangle design, with white covering the top portion of the rectangle, a gold horizontal stripe and the bottom portion of the rectangle is green with a black horizontal stripe pattern</p>	
3,618,542	5/12/2009	<p>The colors green, gold, black and white are claimed as a feature of the mark. The mark consists of a rectangle design, with white covering the top portion of the rectangle, a gold horizontal stripe, the lower portion of the rectangle being green with a black horizontal stripe pattern and a white spinnaker</p>	

		in the lower right corner of the rectangle.	
2,600,870	7/30/2002	Word in stylized form	Newport
1,178,413	11/17/1981	Black & white spinnaker	

(collectively “Lorillard’s Marks”).

b. Each of these trademark registrations is valid and in full force and effect.

c. Lorillard’s NEWPORT mark and trade dress are widely recognized by the general consuming public of the United States as a designation that Lorillard is the source of products bearing that trademark and/or trade dress. As a result, the NEWPORT mark and trade dress are famous pursuant to 15 U.S.C. § 1125(c).

d. Wilson is a North Carolina wholesale company that sells, among other things, tobacco products and associated accessories. For a time in 2010, Wilson also sold herbal incense products, also known as “spice” products.

e. One such “spice” product purchased by Wilson for resale was called NEWPROT, depicted below (the “NEWPROT product”). Wilson purchased 50 packets of the NEWPROT product from California Imports (the “Accused Product”) and distributed 34 packets of Accused Product to customers. The remaining packets of Accused Product were seized pursuant to an order entered by this Court in November 2010.



f. The NEWPROT Product infringes and dilutes Lorillard's rights in the NEWPORT trademarks and trade dress under 15 U.S.C. §§ 1114 and 1125.

7. Wilson and its officers, directors, principals, agents, servants, employees, acquirers, successors, assigns, and all those in active concert or participation with any of them who receive actual notice of this Consent Judgment by personal service or otherwise, are PERMANENTLY ENJOINED and RESTRAINED as of the date of entry of this Consent Judgment from selling, distributing and/or offering to sell the NEWPROT product, or any other product that similarly infringes upon or dilutes Lorillard's NEWPORT trademarks or trade dress, or from displaying, issuing, distributing or using in any manner packaging, labels, signs, literature, display cards, or other packaging, advertising, or promotional materials, or other materials related to the NEWPROT product.

8. Any company or entity that Wilson owns or operates in the future, shall also comply with the provisions of this Consent Judgment.

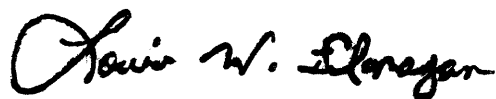
9. This Consent Judgment shall be deemed to have been served upon Wilson at the time of its entry by the Court. Wilson irrevocably and fully waives notice of entry of the Consent Judgment and notice and service of the entered Consent Judgment and understands, confirms, and agrees that violation of the Consent Judgment will expose Wilson to all penalties provided by law, including contempt of Court.

10. Wilson irrevocably and fully waives any and all rights to appeal the Consent Judgment, to have it vacated or set aside, to seek or obtain a new trial thereon, or otherwise to attack in any way, directly or collaterally, its validity and enforceability.

11. Nothing contained in this Consent Judgment shall limit the right of Lorillard to seek relief, including without limitation, damages, for any and all acts of trademark infringement by Wilson occurring after the date Wilson executes this Consent Judgment. Likewise, with the exception of the stipulations of trademark ownership, validity and fame in Paragraphs 6(a) – (c) and the admission of the validity and enforceability of this Consent Judgment in paragraph 10, nothing contained in this Consent Judgment shall limit Wilson in defending itself against any claims of future infringement or dilution or violation of the Consent Judgment asserted by Lorillard.

12. The Court shall retain exclusive jurisdiction of this action to entertain such further proceedings and to enter such further orders as may be necessary or appropriate to implement and enforce the provisions of this Consent Judgment.

SO ORDERED, this the 13th day of October, 2011.

A handwritten signature in black ink, reading "Louise W. Flanagan". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

LOUISE W. FLANAGAN
United States District Judge

We ask for this:

**LORILLARD TOBACCO COMPANY and
LORILLARD LICENSING COMPANY, L.L.C.**

By Counsel

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Local Civil Rule 83.1 Counsel

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